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Application No.: 10/757,629

Inventor(s): Mark J. Kline et al.


Filed: January 14, 2004

Docket No.: 8194C

Confirmation No.: 4664

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/757,629
Inventor(s) : Mark J. Kline, et al.
Filed : January 14, 2004
Art Unit : 3761
Examiner : Laura C. Hill
Docket No. : 8194C
Confirmation No. : 4664
Customer No. : 27752
Title : Absorbent Article With Improved Fastening System

AMENDED APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

With regard to the above-identified application, a Final Office Action was mailed on March 27, 2007, a Notice of Appeal was filed on June 27, 2007, and an Appeal Brief was filed on December 27, 2007. This Amended Appeal Brief is filed in response to a Notice of Non-Compliant Appeal Brief mailed on January 22, 2008.

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

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STATUS OF CLAIMS

Claims 1, 4-5, and 8-19 are pending. Claims 2-3 and 6-7 have been canceled. Claims 1, 4-5, and 8-19 stand rejected. Claims 1, 4-5, and 8-19 are appealed. A complete copy of the appealed claims is set forth in the Claims Appendix attached herewith.

STATUS OF AMENDMENTS

The Applicant has not filed an amendment subsequent to the Final Office Action.

SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 1 claims an article (#20 in Fig. 1, page 3, line 22 – page 4, line 2) to be worn about a wearer comprising: a surface fastening system (#40 in Fig. 2, page 12, line 22 – page 14, line 14) having a primary direction of load bearing (x in Figs. 2,3,6-8, and page 14, lines 18-21) the surface fastening system including a first surface fastening element (#48 in Figs. 1,3, page 19, line 22) and a second surface fastening element (#49 in Figs. 1,3, page 19, line 23), the first fastening element being joined to the article, the second fastening element being disposed so as to be generally in a face to face relationship with the first fastening element when the surface fastening system is in an engaged configuration to fasten at least a portion of the article, the first surface fastening element further including an effective dimension Y (y_1 , y_2 , y_3 , in Fig. 4B, and page 17, line 28 – page 18, line 10) extending substantially parallel to a longitudinal axis (#100 in Fig. 1, page 4, line 11) of the article, the effective dimension Y increasing from a distal edge (x_a in Fig. 3, page 14, lines 22-34) of the first fastening element to a proximal edge (x_b in Fig. 3, page 14, lines 22-34) of the first fastening element, wherein the surface fastening system has different levels of resistance in different directions to disengagement from the engaged configuration.

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Independent claim 17 claims an article (#20 in Fig. 1, page 3, line 22 – page 4, line 2) to be worn about a wearer comprising: a surface fastening system (#40 in Fig. 2, page 12, line 22 – page 14, line 14) having a primary direction of load bearing (x in Figs. 2,3,6-8, and page 14, lines 18-21), the surface fastening system including a first surface fastening element (#48 in Figs. 1,3, page 19, line 22) and a second surface fastening element (#49 in Figs. 1,3, page 19, line 23), the first fastening element being joined to the article, the second fastening element being disposed so as to be generally in a face to face relationship with the first fastening element when the surface fastening system is in a fastened configuration, the first surface fastening element further including an effective dimension Y (y_1 , y_2 , y_3 , in Fig. 4B, and page 17, line 28 – page 18, line 10) extending substantially parallel to a longitudinal axis (#100 in Fig. 1, page 4, line 11) of the article, the effective dimension Y increasing from a distal edge (x_a in Fig. 3, page 14, lines 22-34) of the first fastening element to a proximal edge (x_b in Fig. 3, page 14, lines 22-34) of the first fastening element, wherein the surface fastening system has different levels of resistance to disengagement in different directions, wherein the first fastening element further includes a longitudinally inboard edge (y_a in Fig. 3, page 15, lines 4-5) and a longitudinally outboard edge (y_b in Fig. 3, page 15, lines 4-5), the longitudinally inboard edge being longer than the longitudinally outboard edge.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1, 4-5, and 8-19 are unpatentable under 35 USC § 103(a) over Schmidt (US 3,797,495) in view of Vukos, et al. (US D422,078), and further in view of Tritsch (US 3,937,221).

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ARGUMENTS

The rejections of claims 1, 4-5, and 8-19 under 35 USC § 103(a) over the Schmidt, Vukos, and Tritsch references are improper, because the Final Office Action failed to establish a *prima facie* case of obviousness, since the references do not describe, teach, or suggest each and every claim limitation recited in each of the Applicant's independent claims.

"To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)." MPEP § 2143.03.

The Applicant's independent claims 1 and 17, each recite in part "An article to be worn about a wearer comprising: a surface fastening system" including a "fastening element further including an effective dimension Y extending substantially parallel to a longitudinal axis of the article, the effective dimension Y increasing from a distal edge of the first fastening element to a proximal edge of the first fastening element."

The Applicant's specification and drawings describe and illustrate these aspects of the claimed invention. The Applicant's specification describes a fastening element, by stating:

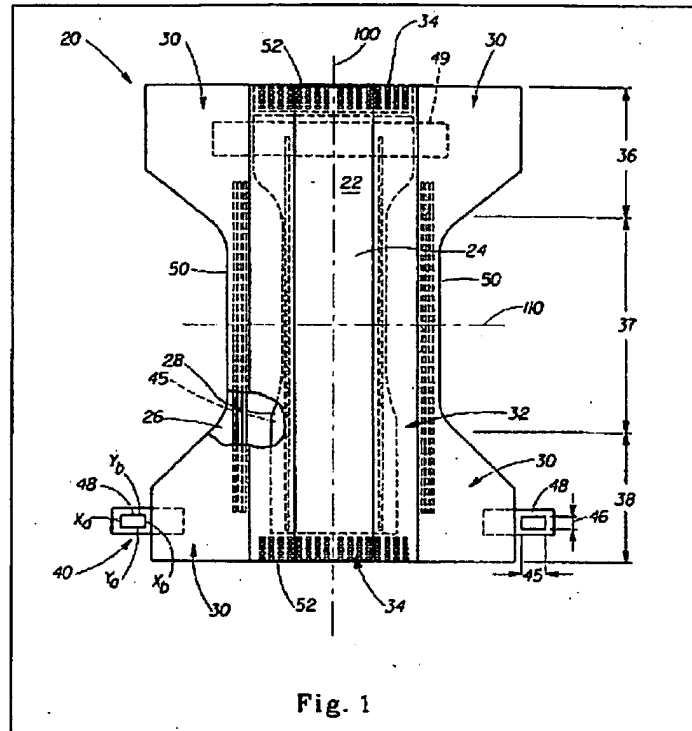
A surface fastening system 40 is a system in which a fastening element covers or forms at least a portion of the surface of one material and joins that surface to at least a portion of a surface of another material. Examples of surface fastening systems 40 include hook and loop, adhesive, cohesive, hermaphroditic, friction, static and magnetic fasteners.

(Page 13, lines 20-23.) The Applicant points out that, as described above, a fastening element may form only a portion of the surface to which it is attached.

The Applicant's Figure 1 illustrates a unitary disposable absorbent article, diaper

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20, including a longitudinal axis 100 and a fastening system 40 with fastening elements 48. (Page 4, lines 1-11.) For reference, Figure 1 is shown below.



"The portion of the diaper 20 which faces the wearer is oriented towards the viewer." (Page 4, line 3.) The Applicant notes that, since Figure 1 illustrates an inside view, the fastening elements 48 are visible. The fastening elements 48 of the fastening system 40 are shown in an enlarged view in the Applicant's Figure 3. For reference, Figure 3 is shown below.

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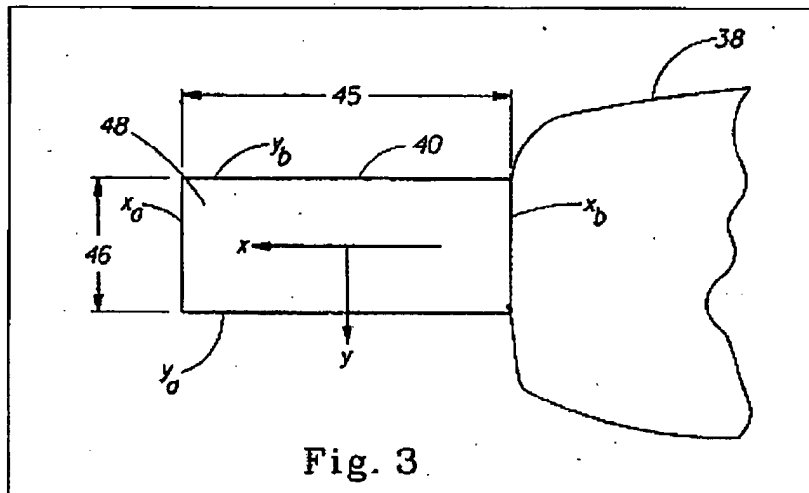
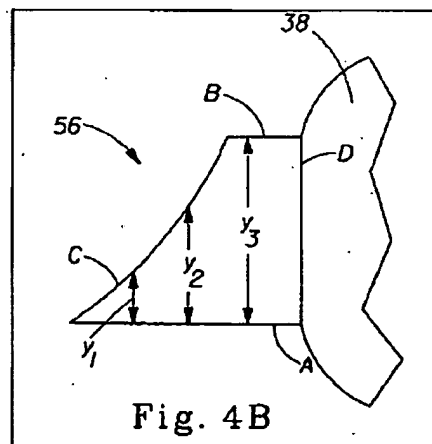


Figure 3 illustrates distal edge x_a of the fastening element 48 as the free end and proximal edge x_b of the fastening element 48 as the end attached to waist region 38. (Page 14, lines 25-27.) The Applicant's Figure 4B illustrates an embodiment of a fastening element with "an effective dimension Y extending substantially parallel to a longitudinal axis of the article, the effective dimension Y increasing from a distal edge of the first fastening element to a proximal edge of the first fastening element" as recited in part in each of the independent claims 1 and 17. For reference, Figure 4B is shown below.

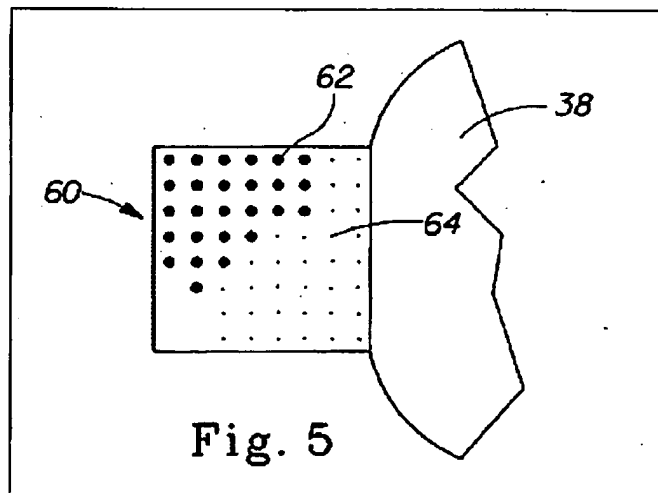


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As described in the Applicant's specification, an "effective" dimension of a fastening element is a dimension over which fastening can effectively occur. (Pages 17-18.) The specification also explains that a fastening element can be configured with effective dimensions in a number of ways. For example:

In alternative embodiments, the peel resistance of a surface fastening system 40 may be selectively altered by varying the effective shape of the engaged area of the surface fastening system 40 in addition or as an alternative to altering the actual shape of the engaged area of surface fastening system 40 as discussed above. For example, Figure 5 shows yet another particular embodiment of a surface fastening system 40 of the present invention in which a generally rectangular patch of fastening material is rendered effectively trapezoidal shaped by selectively damaging a portion of one or more of the fastening elements. For example, portions of the fastening element 60 may be damaged such as by mechanical bonding, ultrasonic bonding, selective heating, or any other process capable of selectively or otherwise disabling a portion of a fastening element. In this embodiment, a first portion 62 of the fastening element 60 may be selectively damaged in order to lower the peel resistance of the surface fastening system 40 in that area, and a second portion 64 may be used to provide a higher peel resistance in an area where the higher peel resistance is desired.

For reference, Figure 5 is shown below.



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The Applicant notes that, since Figure 5 illustrates an inside view, the effective dimensions of the fastening element are visible. The Applicant also points out that, as described and illustrated above, the effective dimensions of a fastening element may differ from the overall dimensions of that fastening element.

The Final Office Action cited the Vukos reference against the above-cited portion of the Applicant's independent claims. Specifically, the Final Office Action stated that:

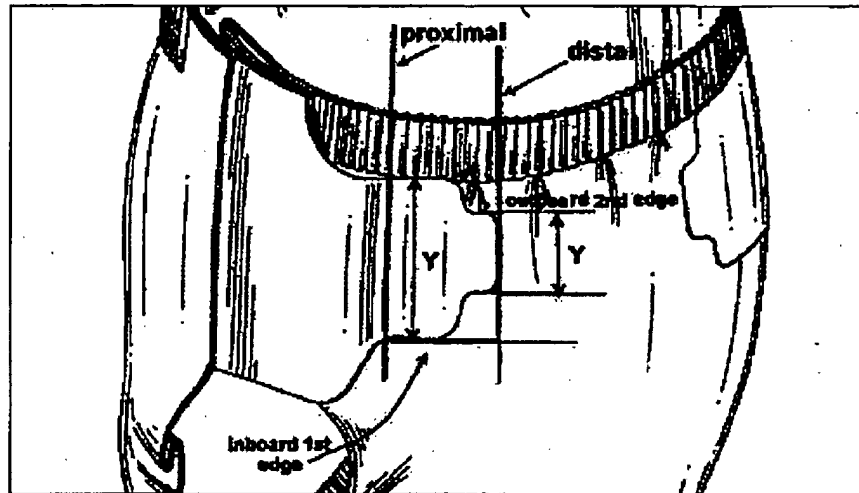
...Examiner maintains Vukos teaches a "fastening element" as discussed below with respect to claim 1. Furthermore, since the Applicant has described the "fastening element" as a surface fastener such as a tape tab, hook, and loop or combination of these diverse and other elements (see instant Specification page 12, lines 22-27), the ear of Vukos is a fastening element as defined by the Applicant since it connects and thus fastens the front panel to the back panel of the article to be placed on a user and forming a waist opening (see additionally figure 1).

...Examiner maintains that Vukos discloses the fastening element/ear has an effective dimension Y extending in the longitudinal direction that increases from the distal/center edge to the proximal edge (see annotated Figure 1 below). Furthermore, it is noted that Vukos is not relied upon for a teaching of a particular dimension as alleged by the Applicant, but rather is relied upon for disclosing the general recitation by Applicant of having an "effective dimension Y increasing from a distal edge of the first fastening element to a proximal edge of the first fastening element" as shown below. There is no positive recitation in the claims that requires the Y dimension to be a particular measured size so long as it is relatively increasing in the longitudinal Y direction.

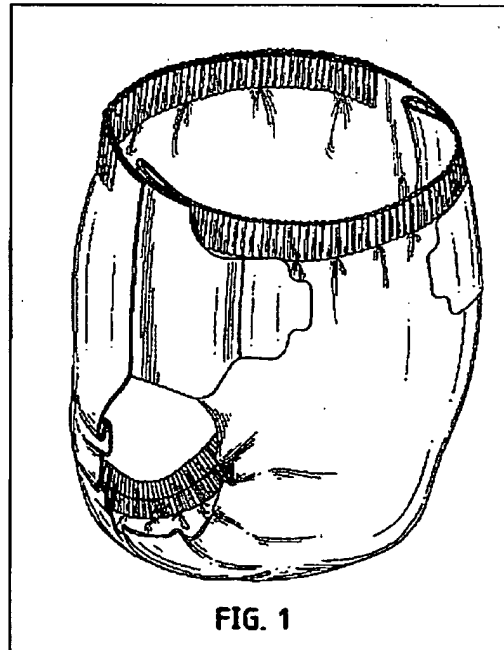
(Page 2, point 1 – page 3.)

The Final Office Action provided an annotated version of Figure 1 of the Vukos reference. (Page 3.) For reference, the relevant portion of annotated Figure 1 is shown below.

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The Vukos reference is a design patent entitled "Disposable Absorbent Article." For reference, the entire original Figure 1 of the Vukos reference is shown below.



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The entire written description for Figure 1 of the Vukos reference is as follows:

Figure 1 is a perspective view of a disposable absorbent article, showing our new design;

(Description.) From the Applicant's review, Figure 1 of the Vukos reference appears to illustrate an ornamental design for a disposable absorbent article that includes ears.

The Applicant submits that the Vukos reference does not describe, teach, or suggest "a surface fastening system" including a "fastening element further including an effective dimension Y extending substantially parallel to a longitudinal axis of the article, the effective dimension Y increasing from a distal edge of the first fastening element to a proximal edge of the first fastening element" as recited in part in each of the Applicant's independent claims 1 and 17.

First, the Vukos reference does not appear to describe, teach, or suggest that any particular element illustrated therein is a "fastening element" as recited in each of the Applicant's independent claims 1 and 17.

Second, even if the Vukos reference does suggest the inclusion of a "fastening element" the Vukos reference does not appear to describe, teach, or suggest that the entire end portion of the ear of Figure 1 is a "fastening element." Thus, the Vukos reference does not describe, teach, or suggest a "fastening element" with an "effective dimension Y" as recited in each of the Applicant's independent claims 1 and 17.

Third, even if the Vukos reference does suggest that the entire end portion of the ear of Figure 1 is a "fastening element," the effective dimensions of the fastening element may differ from the overall dimensions of the ear, as described above. Thus, the Vukos reference does not describe, teach, or suggest a "fastening element" with an "effective dimension Y" as recited in each of the Applicant's independent claims 1 and 17.

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Fourth, even if the Vukos reference does suggest that the entire end portion of the ear of Figure 1 is a "fastening element," the proportions of the ear cannot describe, teach, or suggest an "effective dimension Y" as recited in each of the Applicant's independent claims 1 and 17. The Federal Circuit states that "it is well established that patent drawings do not define the precise proportions of the elements and may not be relied upon to show particular sizes if the specification is completely silent on the issue."

Hockerson-Halberstadt, Inc. v. Avia Group Int'l, Inc., 222 F.3d 951, 956 (Fed. Cir. 2000).

From the Applicant's review, the Vukos reference is completely silent on the issue of dimensions. As a result, a mere illustration of a fastening element would not describe, teach, or suggest "an effective dimension Y" of that fastening element, as recited in part in each of the Applicant's claims 1 and 17.

Fifth, even if the Vukos reference suggests the inclusion of a "fastening element" on the inside of the ear, that fastening element is not visible, since Figure 1 of the Vukos reference illustrates an outside view. Thus, the Vukos reference does not describe, teach, or suggest a "fastening element" with an "effective dimension Y" as recited in each of the Applicant's independent claims 1 and 17.

Sixth, even if the Vukos reference suggests the inclusion of a "fastening element" on the inside of the ear of Figure 1, the dimensions of that fastening element are uncertain, since a fastening element may form only a portion of the surface to which it is attached, as described above. Thus, the Vukos reference does not describe, teach, or suggest a "fastening element" with an "effective dimension Y" as recited in each of the Applicant's independent claims 1 and 17.

For any or all of these reasons, the Vukos reference does not describe, teach, or

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suggest “a surface fastening system” including a “fastening element further including an effective dimension Y extending substantially parallel to a longitudinal axis of the article, the effective dimension Y increasing from a distal edge of the first fastening element to a proximal edge of the first fastening element” as recited in part in each the Applicant’s independent claims 1 and 17.

From the Applicant’s review, neither the Schmidt reference nor the Tritsch reference appear to cure the deficiencies of the Vukos reference. Thus, the Schmidt, Vukos, and Tritsch references, either independently or in combination, do not describe, teach, or suggest a “fastening element further including an effective dimension Y extending substantially parallel to a longitudinal axis of the article, the effective dimension Y increasing from a distal edge of the first fastening element to a proximal edge of the first fastening element” as recited in part in each of the Applicant’s independent claims 1 and 17. As a result, the Applicant respectfully requests reconsideration and withdrawal of the 103(a) rejections for independent claims 1 and 17 and for the pending claims which depend therefrom.

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SUMMARY

In view of all of the above, the Applicant respectfully submits that the appealed claims have been improperly rejected. The Applicant respectfully requests that the Honorable Board of Patent Appeals and Interferences reverse the rejections of the appealed claims and remand the application to the Examiner with instructions that these claims be allowed.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY



Charles R. Ware
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CLAIMS APPENDIX

1. An article to be worn about a wearer comprising:
a surface fastening system having a primary direction of load bearing, the surface fastening system including a first surface fastening element and a second surface fastening element, the first fastening element being joined to the article, the second fastening element being disposed so as to be generally in a face to face relationship with the first fastening element when the surface fastening system is in an engaged configuration to fasten at least a portion of the article, the first surface fastening element further including an effective dimension Y extending substantially parallel to a longitudinal axis of the article, the effective dimension Y increasing from a distal edge of the first fastening element to a proximal edge of the first fastening element, wherein the surface fastening system has different levels of resistance in different directions to disengagement from the engaged configuration.
4. The article of Claim 1, wherein the first fastening element further includes a first edge and a second first edge being offset from the second edge in the direction of dimension Y, wherein the first edge is longer than the second edge.
5. The article of Claim 1, wherein the second fastening element further includes a longitudinally inboard edge, wherein at least a portion of the longitudinally inboard edge is unjoined from the underlying structure of the article.
8. The article of Claim 1, further comprising a chassis including an absorbent member.
9. The article of Claim 1, wherein the article is selected from one of the group of an absorbent article, a diaper, a sanitary napkin, and a body wrap.
10. The article of Claim 1, wherein the article is adapted to form a pant-like article and wherein each of the first and second fastening elements are releasably attached to form a waist opening and a pair of leg openings.

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11. The article of Claim 1 wherein the surface fastening system has a first peak peel load value when measured subject to forces in a y'z-plane through y''z plane which is greater than a second peak peel load value when measured subject to forces in a xz plane.
12. The article of Claim 11 wherein said first peak peel load value is greater than about 1000 grams, more preferably greater than about 1300 grams, even more preferably greater than about 1600 grams, and most preferably greater than about 2000 grams.
13. The article of Claim 11 wherein said second peak peel load value is less than about 1000 grams, more preferably less than about 750 grams, and most preferably less than about 500 grams.
14. The article of Claim 12 wherein said second peak peel load value is less than about 1000 grams, more preferably less than about 750 grams, and most preferably less than about 500 grams.
15. The article of Claim 11 wherein said y'z-plane and said y''z plane are each projected to about 60 degrees from an imaginary longitudinal line.
16. The article of Claim 1 wherein the surface fastening system has different levels of resistance in different directions to peel mode disengagement from the engaged configuration.
17. An article to be worn about a wearer comprising:
 - a surface fastening system having a primary direction of load bearing, the surface fastening system including a first surface fastening element and a second surface fastening element, the first fastening element being joined to the article, the second fastening element being disposed so as to be generally in a face to face relationship with the first fastening element when the surface fastening system is in a fastened configuration, the first surface fastening element further including an effective dimension Y extending substantially parallel to a longitudinal axis of the article, the effective dimension Y increasing from a distal edge of the first fastening element to a proximal edge

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of the first fastening element,
wherein the surface fastening system has different levels of resistance to
disengagement in different directions,
wherein the first fastening element further includes a longitudinally inboard edge
and a longitudinally outboard edge, the longitudinally inboard edge being
longer than the longitudinally outboard edge.

18. The article of Claim 17 wherein the surface fastening system has different levels of
resistance in different directions to disengagement from the fastened
configuration.
19. The article of Claim 17 wherein the surface fastening
system has different levels of resistance to peel mode disengagement in different
directions.

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EVIDENCE APPENDIX

(none)

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RELATED PROCEEDINGS APPENDIX

(none)